

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BENJAMIN GASCA E.
DE LOS M.,

Plaintiff,

Case No. 23-10685

v.

HON. MARK A. GOLDSMITH

FEDERAL BUREAU OF
INVESTIGATION,

Defendant.

OPINION & ORDER
(1) ADOPTING THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION
(Dkt. 10), (2) OVERRULING PLAINTIFF’S OBJECTIONS (Dkt. 11), AND (3)
GRANTING DEFENDANT’S MOTION TO DISMISS (Dkt. 5)

The matter before the Court is the Report and Recommendation (R&R) of Magistrate Judge Kimberly G. Altman issued on October 30, 2023 (Dkt. 10). In the R&R, the magistrate judge recommends that Defendant Federal Bureau of Investigation’s (FBI) motion to dismiss (Dkt. 5) be granted. Plaintiff Benjamin Gasca E. de los M. filed objections to the R&R (Dkt. 11) and Defendants filed a response to Gasca’s objections (Dkt. 12). For the reasons that follow, the Court (i) adopts the recommendation in the R&R in its entirety, (ii) overrules Gasca’s objections, (iii) grants the FBI’s motion to dismiss, and (iv) dismisses the case in its entirety.

I. BACKGROUND

The full relevant factual background is set forth in the magistrate judge’s R&R. See R&R at 1–2. As set forth in the R&R, Gasca’s complaint is nearly duplicative of a virtually identical complaint he previously filed against the FBI and others, which was later dismissed. Id. at 2 (citing Gasca v. Fed. Bureau of Investigation, et al., No. 22-10978 (E.D. Mich. Jan. 18, 2003), report and

recommendation adopted, 2023 WL 1819149 (E.D. Mich. Feb. 8, 2023)). Gasca’s complaint largely consists of vague or incoherent allegations and asserts claims for violations of 42 U.S.C. § 1983 and his Fourth Amendment rights. See Compl. (Dkt. 1).

The FBI filed a motion to dismiss Gasca’s complaint, which the magistrate judge recommends granting. See Mot.; R&R. As the magistrate judge explained in the R&R, Gasca fails to assert a plausible claim for relief. R&R. To the extent Gasca asserts claims against the FBI under § 1983, the FBI is not subject to such suits because it is not a state actor. R&R at 4 (citing Haines v. Fed. Motor Carrier Safety Admin., 814 F.3d 417, 429 (6th Cir. 2016)). To the extent Gasca asserts a claim under Bivens v. Six Case Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), the R&R explains that such a claim fails because “Bivens actions have not been expanded to cover the federal agencies themselves.” R&R. at 5 (citing F.D.I.C. v. Meyer, 510 U.S. 471, 486 (1994)).

The R&R further determined that, while Gasca’s complaint invokes the Fourth Amendment, the allegations contained in the complaint do not state a plausible claim under that provision. R&R at 5–6. As explained in the R&R, Gasca’s complaint does not assert that the FBI subjected him to an unreasonable search or seizure. Id. at 5. Instead, Gasca only asserts that the FBI has not taken certain actions that he believes were required to prevent him from alleged harms. See id. The R&R concluded that such allegations do not support a claim for a violation of Gasca’s Fourth Amendment rights.

II. ANALYSIS

The Court has considered Gasca’s objections and finds them to be without merit. An “objection” that does nothing more than disagree with a magistrate judge’s determination, “without

explaining the source of the error,” is not considered a valid objection. Howard v. Sec’y of Health and Human Servs., 932 F.2d 505, 509 (6th Cir. 1991).

Here, Gasca lists five objections, none of which specifies what is objectionable in the R&R. Gasca’s objections are difficult to follow, but objections 1–3 appear to restate the same sort of vague and conclusory allegations contained in Gasca’s complaint. See Obj. at 2. These objections are not valid because they do not “explain the source” of any error in the R&R, as is required. Objections 4–5 appear to restate the harms Gasca has suffered as a result of the alleged violations of his rights. See id. These objections similarly fail because they do not respond to the R&R or identify any mistake in the R&R’s reasoning.

For these reasons, the Court accepts the R&R in its entirety and dismisses Gasca’s claims with prejudice.

III. CONCLUSION

For the reasons stated above, the Court: (i) adopts the recommendation in the R&R in its entirety, (ii) overrules Gasca’s objections, (iii) grants Defendant’s motion to dismiss, and (iv) dismisses Gasca’s claims with prejudice.

SO ORDERED.

Dated: March 20, 2024
Detroit, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge